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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st October 1952

No. 19/57/52-Elec.III.—WHEREAS the election of Dr. T. R. Naravne of Shivaji Park, Dadar, Bombay, as a member of the Legislative Assembly of Bombay, from the Dadar-Saitan Chowky constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Pralhad Keshav Atre of No. 8 Keluskar Road, North Mahim, Bombay;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BOMBAY

ELECTION PETITION No. 57 OF 1952

In the matter of the Representation of the People Act 1951

and

In the matter of the Election Petition presented thereunder by Pralhad Keshav Atre.

Pralhad Keshav Atre, aged 53 years, Bombay
inhabitant, residing at No. 3 Keluskar Road
North, Mahim, without the Fort of Bombay. *Petitioner.*

Versus

- (1) Dr. Naravne, T. R. Aged 52 years, residing at Shivaji Park, Dadar, without the Fort of Bombay;
- (2) Pendse, L. M., aged 52 years, Bombay inhabitant, residing at Thakurdwar, Girgaum, without the Fort of Bombay;
- (3) Shukla, Sarya Prasad, aged 40 years, Bombay, inhabitant, residing at Shivaji Park, Dadar, without the Fort of Bombay.

Respondents.

Coram.—Sir N. J. Wadia, Chairman of the Tribunal; and Mr. M. D. Lalkaka, and Mr. G. P. Murdeshwar, Members.

Mr. N. C. N. Acharya with Mr. S. S. Dighe instructed by Messrs. Khanderao Laud and Co. for Petitioner.

Mr. T. R. Kapadia, with Mr. U. S. Hattangadi for Respondent No. 1.
Respondents Nos. 2 and 3 absent.

JUDGMENT.

The Petitioner was a candidate from the Dadar-Saitan Chowki Constituency at the elections for the Bombay Legislative Assembly on the 3rd of January 1952. The 1st Respondent, Dr. Naravne was declared to have been elected, he having secured 15058 votes. Petitioner secured 13248 votes. The other two candidates, Respondents Nos. 2 and 3 secured a much smaller number of votes.

The main contentions of the petitioner were that at several of the polling stations polling actually commenced much later than the time notified, which was 8 a.m., with the result that several voters, who came to vote for the petitioner, went away without recording their votes. He also contended that no proper notice was given of the extension of time for polling beyond the scheduled hours, and that many of his supporters, therefore, failed to give their votes in his favour. A further contention was raised that the requirements of Rule 47C of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, were not complied with, that several of the ballot papers found in the ballot boxes of Respondent No. 1 bore serial numbers different from the serial numbers of the ballot papers authorised for use at the particular polling station; and that at several of the polling stations in the constituency, several ballot papers issued to the voters were not placed in the ballot boxes of the respective polling stations in which they were issued, but were removed to other polling stations, and were illegally thrown into the ballot boxes of Respondent No. 1. He alleged that these illegal and corrupt practices had been followed in respect of the 1,254 ballot papers which were declared to have been short in the Polling stations; while the same or nearly the same number was found to be in excess of those actually issued at other polling stations, having been put into the ballot box of Respondent No. 1.

Only the 1st Respondent, Dr. Naravne, has appeared to oppose the Petition. Respondents Nos. 2 and 3 remained absent throughout.

The Petitioner prays that the entire election should be declared void and a re-election ordered and further that the election of the 1st Respondent be declared void and the Petitioner should be declared elected. The second set of prayers was not made alternatively to the first:

We sent for the ballot boxes containing the ballot papers of the 54 polling stations of the constituency, and at the request of the petitioner's Advocate, Mr. Acharya, the bundle containing the ballot papers of Booth No. 1, which was selected by him as a test case, was opened and examined in the presence of the parties and their advocates. After the examination Mr. Acharya stated before us that he was satisfied from the inspection of the ballot papers that the explanation given by the 1st Respondent, that the discrepancies were due merely to interchange of boxes, was correct, and that he did not, therefore, press his objection under Rule 47C. It is, therefore, not necessary for us to decide the two issues which we have framed on this point, whether there had been any improper acceptance of votes by reason of the breach of Rule 47C, and whether such acceptance materially affected the result of the election. It is clear that the discrepancies referred to by the petitioner were due only to an interchange of the boxes, and that there was no substance in the contention of the petitioner that in any of the polling booths ballot papers were found which did not belong to the series issued at that particular polling booth.

It has been admitted by the 1st respondent that polling started at 53 out of the 54 polling booths later than the schedule time, viz., 8 a.m., and that the starting times, as given in the particulars furnished by the Petitioner are correct. It is in evidence that under the orders of Government the time for polling at each polling station was extended so as to make up for the time by which polling had started late at that particular polling station, and that this extension of time provided for 8 hours' polling at each polling station.

The question that we have to decide is whether this extension of the polling hours beyond 6 p.m. was legal: whether it was properly notified to the public; and whether, if it was not legal or properly notified, the whole election had been rendered null and void.

It appears from the evidence of the Chief Electoral Officer for the Bombay State, Mr. Dalal, that under the orders of Government time for polling was extended from 6 p.m. to 7-30 p.m. at the latest, because of the late starting of the polling. Section 56 of the Act provides that the appropriate authority, in this case the State Government, shall fix the hours during which the poll will be taken and the hours so fixed shall be published in such manner as may be prescribed. The proviso to the section says that the total period allotted on any one day for polling shall not be less than 8 hours. Rule 16 provides that the hours fixed for polling under section 56 shall be published by notification in the official gazette and in such other manner as the Election Commission may direct. Section 57 of the Act provides for adjournment of the poll in certain emergencies, such as an interruption of the poll due to rioting or open violence or to any natural calamity or any other sufficient cause; but in such cases the section provides that the Returning Officer shall announce an adjournment of the poll to a date to be notified later. Rule 17(2) provides that the polling station shall be closed at the hour fixed under section 56, and that the presiding officer shall not admit any elector after that hour.

It is unfortunate that at the election, with which we are dealing, the starting of the poll was delayed at almost all polling stations and booths. In some cases, the delay was negligible, being only 5 to 15 minutes; but in a very large number of cases it was considerable, being anything from one and a half to two hours beyond the scheduled time of 8 a.m., and in 5 cases, at Polling Booths 15, 23, 25, 26 and 27 the polling started after 10 o'clock. It is in evidence that under the orders of Government communicated to the Chief Electoral officer, Mr. Dalal, the time for the closing of the poll was extended so as to make up for the delay in starting but so as not to go beyond 7-30 p.m. Except in the 5 cases, which we have referred to above, the minimum 8 hours of polling prescribed by section 56 would have been provided for at all the polling stations by 6 p.m. At the 5 polling stations where the polling started after 10 a.m. the minimum requirement of 8 hours was complied with by the extension of time up to 7-30 p.m.

It is extremely unfortunate that owing to the delays which occurred in the distribution of ballot papers and other material to the different polling stations, polling could not be started punctually. It would appear that sufficient time was not allowed for the distribution of the papers and material to such a large number of polling stations and booths, and that this was largely responsible for the delay. We are satisfied that the Chief Electoral Officer and the Electoral staff working under him did all they could to start the work as soon as possible. A considerable allowance has to be made for the fact that this was the first election held under the new Act and Rules, and that the election had to be conducted on a very large scale. The inadvertent interchange of ballot boxes between the booths was in no sense a contravention of any provision of the law.

There was also no serious irregularity so far as the late starting of the polling was concerned, provided that the minimum polling time of 8 hours was available in each case up to the prescribed closing time of 6 p.m., but in the 5 cases, referred to by us above, in which the polling started after 10 a.m., this period of 8 hours was not available except by the extension of the closing time beyond 6 p.m. There is no provision in the Act or Rules, which authorises the Government to extend the time of polling beyond that originally fixed, viz., 6 p.m. The case is not covered by the provisions of section 57, which only provide for an adjournment of the poll to another date to be subsequently notified. The extension of the closing time beyond 6 p.m. was therefore, in our opinion, unauthorised, because the law could not possibly contemplate such an extension order being passed on the day of the election when no proper notice to the voter would be possible. It has to be noted that the hours of polling originally fixed viz., 8 a.m. to 6 p.m., already provided for a margin of 2 hours over the prescribed minimum polling time of 8 hours to cover any unforeseen circumstances which might delay the starting of the poll.

There is, however another and a more serious objection to the extension of time. Rule 16 provides that the hours fixed for polling under section 56 shall be published by notification in the official gazette and in such other manner as the election Commission may direct. It has been admitted in this case by the Chief Electoral Officer that the extension of the hours of polling could not be notified in the Government Gazette as required by Rule 16, because there was no time, to do so, the decision to extend the time having been taken by Government late in the afternoon of the day of polling. From the extract from the directions of the Election Commission Ex. F, put in by the Chief Electoral Officer, Mr. Dalal, it appears that besides publication of the hours of polling in the official gazette of the State, as required by Rule 16, the Election Commission had directed that

the hours of polling could be published by (i) a formal press note by the State Government; (ii) by radio announcements; (iii) by notices published in the office of every District Magistrate, Sub-Divisional Officer; District Judge, Munsiff, Police Station, Post office, Municipal Office and in the office of such other local self governing body, as the Chief Electoral Officer may specify; and (iv) by beat of drums in markets 'hats' and fairs wherever possible. The extension of time in this case was admittedly not notified to the public in any one of these ways. From the evidence of the Electoral Officer it appears that all that was done was to circulate a memorandum announcing the extension of time to the Presiding Officers. It appears from the evidence of Mr. Shaikh, the Electoral Officer for Greater Bombay, who issued the circular, Ex. 'G' to the Presiding Officers, that he did not inquire from the Presiding Officers whether any notice of this circular was given either to the candidates or to the voters. Mr. Dongre, the Presiding Officer in Polling Booth No. 23 says that he ascertained by inquiries from the Presiding Officers of other polling booths that the time had been extended to 7-30, but he received no written instructions himself. Mr. Guha, the Presiding Officer in Booth No. 27, has stated that he received oral instructions either from the Assistant Returning Officer or some member of his staff that the time had been extended. He admits that he did not put up any notice about this extension to inform either the candidates or their agents or the voters. Mr. Savkur, the Presiding Officer in Polling Booth No. 26, says that he received telephonic instructions about the extension of time. No notice was put up but he says that he communicated the information to the candidates' agents, who were in the booths. Evidence to much the same effect has been given by Mr. Mule, the Presiding Officer in Polling Station 2.

We must, therefore, hold that the extension of polling hours beyond 6 p.m., was not legal and also that the fact of extension was not published for the information of candidates and voters, as required by the Act and the Rules. Section 100, sub-clause (2)(c) provides that if the Tribunal is of opinion that the result of the election has been materially affected by the improper reception of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act, the Tribunal shall declare the election of the returned candidate to be void. This is the only provision of the law which the petitioner has been able to rely on in support of his petition. But it is clear from this section that the mere non-compliance with the provisions of the Constitution or of the Act or of any rules would not by itself entitle the Tribunal to declare the election of the returned candidate void. It must be shown that the result of the election has been materially affected by such improper reception or non-compliance. The law by which elections to the Indian Legislature are governed is laid down by the Representation of the People Act, 1951 and the Rules made thereunder, and it is not open to us to go beyond those provisions to the principles of English Common Law by which elections in England are partly governed. There is a certain amount of difference between the English law on this point and the law which now prevails in this country. Under the Indian law concrete proof of non-compliance or irregularity is not enough and it has to be proved that the result of the election has been materially affected by such non-compliance or irregularity. Under the English law, on the other hand, a Court would be justified in setting aside an election if it was satisfied that there was a likelihood that the result of the election may have been affected; vide the decision in *Malik Barkatali v. Moulvi Moharam Ali Chisti*, cited in *Hammond's Election Cases*, p. 469 at p. 473 and *Shrivatsa's Indian Elections and Election Petitions* Vol. II p. 214. Section 81 makes it clear that an election petition can be presented only on the grounds specified in section 100 and section 101, and it is not, therefore, permissible for the Tribunal to go beyond the provisions of those sections in deciding whether an election can be declared void or the election of a particular candidate can be declared void.

In the present case, there is no sufficient evidence, which could justify us in holding that the unauthorised extension of voting time beyond 6 p.m. or the reception of votes after 6 p.m. materially affected the result. Respondent No. 1, the returned candidate had a majority of 1810 votes over the petitioner. The petitioner did not allege in his petition that the result of the election had been materially affected by the extension of time beyond 6 p.m. He merely complained that the extension had been made without proper notice. Under the circumstances, we could not allow him to amend his petition to plead the further fact that the result of the election had been affected. The evidence that we have on this point consists of the statements of the Presiding Officers of Booths Nos. 2, 17, 23, 25, 26 and 27 that a few persons voted after 6 p.m. at their polling booths. The number given by them varies between 5 and 35 or an average of about 20 at each of these polling booths. Even if we were to assume that this average applied to all the 52

polling booths, it would mean that about 1060 persons voted after 6 p.m. Such a presumption, would not, in our opinion, be justified, because at 5 out of these six polling booths polling started very late. It may safely be presumed that at those booths at which it had started much earlier practically all the voters must have polled before 6 p.m. However, even if we were to assume that about 1060 persons voted after 6 p.m. we have no means of knowing how many of them voted for Respondent No. 1 and how many for the Petitioner and how many for the other two candidates. Respondent No. 1 obtained roughly 45 per cent. of the valid votes, so that if any conjecture is to be made, only about 45 per cent. of the 1060 votes i.e. about 477 votes, could have gone to Respondent No. 1 and about 39 per cent. or about 413 votes to the petitioner himself. Even, therefore, if we could have gone into the question whether the result was or was not materially affected by the unauthorised voting after 6 p.m., we could not have found that the unauthorised extension of voting time after 6 p.m. or the improper reception of votes after that time had materially affected the result of the election.

It has been contended by the petitioner that owing to the late starting of the polling at most of the polling stations many votes were lost; and that a large number of his voters got tired of the delay and went away without voting. There is hardly any evidence to support this contention. The evidence of the Presiding Officers, who have been examined in this case does not suggest that any appreciable number of voters could have gone away because of the delay in the starting of the poll. Only one of the Presiding Officers, Mr. Savkur has said that a few people went away, because of the delay in the starting of the poll. It has to be noted that in this particular case the delay in starting was very considerable, the polling having started at 10-30. At the majority of polling stations polling started much earlier. It is, therefore, most unlikely that any appreciable number of voters could have gone away because of the delay in the starting of the polling. Moreover, all the candidates must have been equally affected by this delay, and each of them must have lost some votes. It has also to be borne in mind that a good many of the voters, who went away in the morning without voting may have returned later on in the day to vote. Candidates and their agents must have seen to this. We do not, therefore, think that the late starting of the poll could have affected the result of the election to any appreciable extent.

The Petitioner has failed to prove his case. The Petition is, therefore, dismissed. As Petitioner had alleged corrupt and illegal practices against the Respondent 1 we would have awarded respondent 1 full costs which we would have quantified at Rs. 600. But at the earliest stage and before the issues were framed the Petitioner gave up his contentions with regard to his allegations of corrupt practice. He has succeeded in showing that there were several illegalities in the procedure followed. Taking these facts into consideration we order that Petitioner should pay Rs. 300 to Respondent No. 1 as costs.

(Sd.) N. J. WADIA

(Sd.) M. D. LALKAKA

(Sd.) G. P. MURDESHWAR

17-10-52.

P. S. SUBRAMANIAN,
Officer on Special Duty.

